

JOHNSON & WEAVER, LLP
Brett M. Weaver, Esq. (SBN 204715)
Frank J. Johnson, Esq. (SBN 174882)
600 West Broadway, Suite 1540
San Diego, CA 92101
Telephone: (619) 230-0063
Facsimile: (619) 255-1856
E-mail: BrettW@johnsonandweaver.com
E-mail: FrankJ@johnsonandweaver.com

Attorneys for Plaintiff
DONNA ZIZIAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DONNA ZIZIAN, Individually and on
behalf of all other similarly situated
California Residents,

Plaintiff,

v.

MASSAGE ENVY FRANCHISING,
LLC, a Delaware limited liability
company,

Defendant.

Case No. '16CV0783 WQHJLB

**CLASS ACTION COMPLAINT
FOR:**

- (1) BREACH OF CONTRACT**
- (2) VIOLATION OF THE
IMPLIED COVENANT OF
GOOD FAITH AND FAIR
DEALING**
- (3) VIOLATION OF CAL. BUS. &
PROF. CODE §§ 17200, ET
SEQ.**
- (4) DECLARATORY RELIEF
PURSUANT TO THE
DECLARATORY
JUDGMENT ACT, 28 U.S.C.
§ 2201**

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

1 Plaintiff, Donna Zizian (“Plaintiff”), files this complaint as to herself and
2 all others similarly situated (“Class Members”), against Defendant Massage
3 Envy Franchising, LLC (“Massage Envy”), for breach of contract, breach of the
4 implied covenant of good faith and fair dealing, violation of California
5 Business & Professions Code §§ 17200, et seq., and for declaratory relief
6 pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. Plaintiff, based on
7 her own experience, and as to all other allegations, based on a review of reports,
8 complaints, and investigation about Massage Envy, alleges the following.

9
10 **I. INTRODUCTION**

11 1. Massage Envy is a membership-based franchise specializing in
12 massages. After signing up, members receive one fifty-minute massage per
13 month, in consideration for a monthly fee of approximately \$60.00. All pre-paid
14 massages a member has paid for that month and is unable to use for that month
15 accrue for the member to redeem later at his or her convenience. Massage Envy
16 has however inserted unconscionable provisions into its adhesion contract that
17 requires members to continue purchasing additional monthly massages as a
18 precondition to redeeming the previously purchased unused massages. If a
19 member cancels or ceases payment for the monthly purchases of additional
20 massages when those charges become due, all of the unused pre-paid massages
21 that have not been redeemed are summarily and irreversible forfeited.

22 2. For Plaintiff and Class Members, Massage Envy’s forfeiture of the
23 prepaid massages breaches the uniform provision of Massage Envy’s
24 Membership Agreement that provides: “If you have Paid in Full for your
25 membership services, you will be refunded the unused portion of your
26 membership dues for any actual services you have not yet received.” Massage
27 Envy’s failure to either allow members to redeem the massages or refund the
28 members the cost of the massages constitutes a breach of contract and breach of

1 Massage Envy's implied covenant of good faith and fair dealing. It also violates
2 California's Unfair Competition Law.

3 4 **II. JURISDICTION AND VENUE**

5 3. This Court has jurisdiction over the subject matter of this action
6 under the Class Action Fairness Act. Plaintiff alleges that the cumulative amount
7 in controversy for Plaintiff and Class Members exceeds \$5 million, exclusive of
8 interest and costs.

9 4. Venue is proper pursuant to 28 U.S.C. § 1391(a) and (c) because
10 substantial parts of the acts and transactions giving rise to the violations of law
11 complained of herein occurred in this District and because Massage Envy:

- 12 (a) conducts business itself or through its agent(s) in this District, by
13 providing services to Plaintiff and Class Members located in this
14 District; and/or
15 (b) is licensed or registered in this District; and/or
16 (c) otherwise has sufficient contacts with this District to justify
17 Massage Envy being fairly brought into court in this District.
18

19 **III. PARTIES**

20 5. Plaintiff is, and at all times relevant hereto was, a resident of the
21 County of San Diego and a citizen of California. Plaintiff has been a member of
22 Massage Envy at all times since 2008. Plaintiff signed a standardized contract
23 with Massage Envy that provided for one \$59.00 massage per month. Plaintiff's
24 contract with Massage Envy had an initial term of 12 months, with an automatic
25 renewal clause that continues month-to-month until cancelled. Plaintiff has at
26 least 40 prepaid, unused massages. Plaintiff has kept her membership account
27 current in the hopes that she would eventually be able to redeem her unused
28 massages.

1 6. Massage Envy is a Delaware limited liability company with its
2 principal place of business at 14350 North 87th Street, Suite 200, Scottsdale,
3 Arizona, 85260. Massage Envy is the franchisor and principal for all Massage
4 Envy clinics in California. Massage Envy contractually requires all Massage
5 Envy clinics in California to include certain material terms in its membership
6 agreements including the requirement that Plaintiff and Class Members “agree to
7 pay [Massage Envy] for the membership, goods and services according to the
8 payment schedule,” that Plaintiff and Class Members “may continue to redeem
9 [their] pre-paid massages after the initial term of the membership as long as
10 [their] membership has been renewed and is current,” and that Plaintiff and the
11 Class Members’ membership “must be active in order to redeem any
12 membership services including membership massages.” Massage Envy permits
13 Plaintiff and Class Members to redeem their prepaid massages at any Massage
14 Envy clinic in the nation.

15 7. Massage Envy maintains operational control over most, if not all,
16 aspects of its California clinics, including but not limited to, the System
17 Standards applied through Massage Envy’s Operations Manual. The Manual
18 governs the standards, specifications, operating procedures and rules for Massage
19 Envy clinics including, all products and services clinics can (and cannot) sell,
20 pricing of goods and services, location (and relocation) of clinics, hiring of real
21 estate broker(s) and clinic lease or purchase terms, staffing levels, employee
22 qualifications and training protocols, dress and appearance standards for
23 employees, and marketing protocols. Massage Envy owns all accounts and any
24 corresponding information for both Plaintiff and Class Members. In addition, the
25 Massage Envy Franchise Agreement gives Massage Envy the right to cancel
26 clinics’ Franchise Agreements if they do not continually maintain Massage
27 Envy’s prescribed standards.

1 8. Massage Envy is the successor-in-interest to Massage Envy
2 Limited, LLC, founded as an Arizona limited liability company in 2002, which
3 franchised the California clinics from February 2003 through December 2009. In
4 2008, Massage Envy Limited, LLC was sold to Veria Network, a Texas
5 subsidiary of the Essel Group, a multi-billion-dollar consortium based in India.
6 In January 2010, Veria sold Massage Envy Limited, LLC to Sentinal Capital
7 Partners, a private equity firm headquartered in New York City. In October
8 2012, Sentinal Capital Partners sold the Massage Envy franchise to Roark
9 Capital Group.

11 **IV. SUBSTANTIVE ALLEGATIONS**

13 **A. Allegations Concerning All Class Members**

14 9. Massage Envy markets itself as a “pioneer and national leader of
15 affordable massages and spa services.” Massage Envy has over 700 clinics
16 nationwide with approximately 132 of these locations in California. Massage
17 Envy employs approximately 16,000 massage therapists making it one of the
18 largest employers of licensed/registered massage therapists in the United States.
19 Massage Envy has since acquired over 1 million members at all clinic locations.

20 10. Massage Envy’s business model was created in 2002, mimicking a
21 *health club* membership model. Under the health club membership model,
22 members pay a monthly fee to gain access to the facilities or services they
23 provide. Massage Envy’s business model is slightly different. Under Massage
24 Envy’s business model, members pay a monthly membership fee ranging from
25 \$49 to \$59 and in return, receive a pre-paid transferable monthly massage/facial.
26 However, members do not gain access to the facilities, they simply receive a
27 service in return.

11. Additionally, services rendered at Massage Envy are not exclusive to members but non-members are also able to pay for and receive services, unlike the exclusivity granted to members at health clubs. The “membership” aspect of Massage Envy’s business model simply arises from the recurring nature of Massage Envy’s charges.

12. Massage Envy’s approach for recruiting members is two-fold. First, when a prospective customer first visits a Massage Envy clinic, they are offered a massage at an introductory price. Then, immediately after the customer receives their massage, while in a relaxed (compromised) mental state, Massage Envy’s protocol is to offer the customer a Massage Envy membership. The membership is advertised as a one-time, take it or leave it opportunity. The potential customer must then sign Massage Envy’s standardized adhesion contract with the recurring monthly massages (the “Membership Agreement”), in order to take advantage of this opportunity.

13. Plaintiff and each Class Member have signed Massage Envy’s Membership Agreement for personal, family, or household purposes. A true and correct exemplar of Massage Envy’s Membership Agreement is attached as Exhibit A. The Membership Agreement provides in part¹:

(a) “Your membership dues of [amount] (not including any additional applicable taxes) will be due on the [date] day of each month hereafter until your membership expires or is terminated in accordance with this agreement.”

(b) “You have the entire term of the membership agreement to use all pre-paid massages. You may continue to redeem your pre-paid massages after the initial term of the membership as long as your membership has been renewed and is current.”

¹ Variations in the Membership Agreement are provided in brackets.

1 (c) “Your membership status must be active in order to redeem any
2 membership services including membership massages.”

3 (d) “You agree to pay us for the membership, goods and services
4 according to the payment schedule above.”

5 (e) “Your Dues Based membership entitles you to (1) one hour massage
6 session in clinic per month during the term of your membership.”

7 (f) “You may cancel your membership during the original term in the
8 event that: (a) the member **permanently** relocates his or her
9 residence more than a 25 mile radius away from any Massage Envy
10 clinic; or (b) a physician certifies that a member is permanently
11 disabled or unable to avail himself or herself of massage services
12 All cancellation requests **MUST** be accompanied by written proof
13 of relocation (i.e., Mortgage or Rental agreement, utility bill, car
14 insurance, etc.) or submission of Doctor’s note. Upon approval of
15 your cancellation during the initial membership term, you will be
16 relieved from making any future membership dues payments.”

17 (g) “If you have Paid in Full for your membership services, you will be
18 refunded the unused portion of your membership dues for any actual
19 services you have not yet received.”

20 14. Each Class Member’s Membership Agreement is either identical or
21 functionally identical in its material terms. Even though the Membership
22 Agreement does not expressly provide for forfeiture, Massage Envy uniformly
23 interprets its Membership Agreement to provide that if a member has not paid all
24 charges when due, misses a monthly payment, and/or cancels their account, all
25 prepaid massages in the member’s account will have to be redeemed within a
26 very short 60-day window or be forfeited.

27 15. The Membership Agreement does not expressly provide forfeiture
28 of the unused pre-paid massages when members either cancel and/or do not keep

1 their account current by making timely payments. Instead, the Membership
2 Agreement contains an express refund clause that Massage Envy disregards in
3 favor of ambiguous terms that Massage Envy misleadingly and impermissibly
4 construes to compel forfeiture.

5
6 **B. Class Action Allegations**

7 16. Plaintiff brings this action as a class action under Federal Rule of
8 Civil Procedure 23(a) and 23(b)(3) on behalf of all current members of a clinic or
9 spa owned and operated by a Massage Envy Franchisee within California.
10 Excluded from the Class are Massage Envy and any person, firm, trust,
11 corporation, or other entity related to or affiliated with Massage Envy.

12 17. The Class Members are so numerous that joinder is impracticable.
13 While the exact number of Class Members is unknown to Plaintiff at this time,
14 Plaintiff is informed and believes that there are hundreds of thousands of Class
15 Members.

16 18. The exact number of Class Members will be ascertained through
17 appropriate discovery by Massage Envy's proprietary software called
18 "Millennium 2009" (or the current update). This software is used for member
19 management and accounting, point of sale, cash register, and credit card
20 processing functions. Massage Envy requires each clinic to install this software,
21 which Massage Envy sublicenses to its franchised clinics. Massage Envy has
22 independent unlimited access to the information generated and tracked by the
23 computer systems of its franchised clinics, including information generated from
24 Millennium 2009 (or the current update). Thus, Massage Envy can readily
25 obtain information to identify Class Members, as well as the number of massages
26 each Class Member currently has.

27 19. Each Class Member paid Massage Envy a monthly membership
28 charge, from which the number of redeemed massages can be deducted to

1 determine the class-wide restitution and/or damages and/or reinstated massages
2 as maintained by Massage Envy's records.

3 20. The claims asserted by Plaintiff are typical of all other Class
4 Members. All Class Members have been and/or continue to be similarly affected
5 by Massage Envy's wrongful conduct as complained of herein, in violation of
6 California law.

7 21. Plaintiff has no interests adverse to the Class Members. Plaintiff
8 will fairly and adequately protect Class Members' interests and has retained
9 counsel competent and experienced in consumer class action lawsuits and
10 complex litigation.

11 22. Massage Envy has acted with respect to each Class Member in a
12 manner generally applicable to each Class Member. Common questions of law
13 and fact exist as to all Class Members and predominate over any questions
14 wholly affecting individual Class Members. There is a well-defined community
15 of interest in the questions of law and fact involved in the action, which affect all
16 Class Members. Among the questions of law and fact common are, *inter alia*:

- 17 (a) Whether Massage Envy is a party to Membership Agreements with
18 Plaintiff and Class Members and/or are liable for the actions of
19 Massage Envy's franchised clinics;
- 20 (b) Whether Massage Envy's forfeiture of prepaid massages breaches
21 the refund clause in Massage Envy's Membership Agreement;
- 22 (c) Whether Massage Envy's forfeiture of prepaid massages breaches
23 the implied covenant of good faith and fair dealing attendant to
24 Massage Envy's Membership Agreement;
- 25 (d) Whether Massage Envy's contractual clauses requiring forfeiture of
26 paid massages are (void) liquidated damage clauses within the
27 meaning of California Civil Code § 1671;
- 28

- 1 (e) Whether Massage Envy was required pursuant to California Civil
2 Code § 1442 to interpret its Membership Agreement in a manner not
3 compelling forfeiture;
- 4 (f) Whether Massage Envy's forfeiture provisions are procedurally
5 and/or substantively unconscionable under California Civil Code
6 § 1670.5;
- 7 (g) Whether Massage Envy's contractual forfeiture of paid massages
8 constitutes "unlawful" business acts or practices under, *inter alia*,
9 California Business & Professions Code §§ 17200 by violating
10 California Civil Code §§ 1442, 1670.5 and/or 1671;
- 11 (h) The nature and extent of damages, restitution, equitable remedies,
12 and injunctive relief to which Plaintiff and Class Members are
13 entitled;
- 14 (i) Whether Plaintiff and Class Members are entitled to declaratory
15 relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201,
16 declaring that Massage Envy's Membership Agreement does not
17 entitle Massage Envy to forfeit Plaintiff's and Class Members'
18 prepaid massages; and
- 19 (j) Whether Plaintiff and Class Members should be awarded attorneys'
20 fees and the costs of suit.

21 23. A class action is superior to all other available methods for the fair
22 and efficient adjudication of this controversy since joinder of all members is
23 impracticable. Furthermore, as the damages suffered by individual Class
24 Members may be relatively small, the expense and burden of individual litigation
25 makes it virtually impossible for Class Members to individually redress the
26 wrongs done to them. There will be no difficulty in managing this action as a
27 class action.
28

1 and fair dealing, Plaintiff and each Class Member has sustained loss, cost,
2 damage, and expense in an amount to be proven at trial.

3
4 **COUNT TWO**

5 **On Behalf of Plaintiff and All Class Members for**
6 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

7 32. Plaintiff incorporates by reference and re-alleges each and every
8 paragraph above as though fully alleged herein.

9 33. The Membership Agreement contains as a matter of law an implied
10 covenant of good faith and fair dealing.

11 34. Massage Envy interferes with and frustrates Plaintiff's and Class
12 Members' ability to obtain the benefits of their Membership Agreements by
13 forfeiting all their prepaid massages upon cancellation.

14 35. As a direct and proximate result of Massage Envy's breaches of the
15 implied covenant of good faith and fair dealing, Plaintiff and each Class Member
16 has sustained loss, cost, damage, and expense in an amount to be proven at trial.

17
18 **COUNT THREE**

19 **On Behalf of Plaintiff and All Class Members for Unfair Competition Under**
20 **California Business & Professions Code §17200, et seq. (the "UCL")**

21 36. Plaintiff incorporates by reference and re-alleges each and every
22 paragraph alleged above as though fully alleged herein.

23 37. The UCL prohibits business practices or acts that are unlawful,
24 unfair, or fraudulent.

25 38. Massage Envy's practice of forfeiting pre-paid massages but unused
26 massages when Class Members terminate their memberships violates the UCL
27 because:

- 28 (a) The Membership Agreements do not unequivocally state that Class
Members will forfeit any paid for massages if they do not use them

1 within 30 days of cancellation of their membership. The
 2 Membership agreements therefore violate California Civil Code
 3 § 1670.5(a)'s prohibition against unconscionable contract provisions
 4 and Civil Code § 1442's requirement that any forfeiture clause in a
 5 contract must contain express, unambiguous language regarding the
 6 forfeiture.

7 (b) As detailed above, forfeiting accrued but unused massages violates
 8 the Membership Agreement's implied covenant of good faith and
 9 fair dealing.

10 39. As a direct and proximate result of Massage Envy's "unlawful" and
 11 "unfair" business practices, Plaintiff and each Class Member have been
 12 wrongfully deprived of money and/or property. Plaintiff suffered injury-in-fact
 13 as a result of Massage Envy's forfeiture of her paid massages by being charged,
 14 and paying for, unrefunded Massage Envy charges.

15 40. Massage Envy received and is in possession of excessive and unjust
 16 revenues and profits and/or has caused Plaintiff and other Class Members to lose
 17 money or property directly because of Massage Envy's wrongful acts and
 18 practices.

19 41. On behalf of herself and other Class Members, Plaintiff seeks full
 20 restitution of unredeemed massage charges to the fullest extent permitted by law.

21 COUNT FOUR

22 **On Behalf of Plaintiff and All Class Members for Declaratory Relief Under 23 the Declaratory Judgment Act, 28 U.S.C. § 2201**

24 42. Plaintiff incorporates by reference and re-alleges each and every
 25 paragraph alleged above as though fully alleged herein.
 26
 27
 28

1 43. Under 28 U.S.C. § 2201, Plaintiff and Class Members are entitled to
2 have this Court establish by declaration their rights and legal relations under the
3 Membership Agreement.

4 44. Accordingly, Plaintiff on behalf of Class Members prays for a
5 declaration that Massage Envy's standardized Membership Agreement does not
6 permit Massage Envy to forfeit the prepaid massages of Plaintiff and Class
7 Members.

8
9 **IV. PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff and Class Members pray for relief and judgment
11 as follows:

12 A. For an order declaring that this action is properly maintained as a
13 class action and certifying a class representative in accordance with Rule 23 of
14 the Federal Rules of Civil Procedure, appointing Plaintiff as representative of the
15 Class Members, and appointing Plaintiff's counsel as Class Members' counsel;

16 B. For an order awarding Plaintiff and Class Members monetary
17 damages, restitution and/or an injunction prohibiting Massage Envy's forfeiture
18 of massages, and/or other equitable relief as the Court deems proper, including
19 but not limited to reinstatement of Plaintiff's and Class Members' prepaid
20 massages;

21 C. For an order enjoining Massage Envy from continuing to engage in
22 the unlawful business acts and practices as alleged herein;

23 D. For declaratory relief pursuant to the Declaratory Judgment Act,
24 28 U.S.C. § 2201;

25 E. For an order awarding Plaintiff and Class Members of the class pre-
26 judgment and post-judgment interest;

27 F. For an order awarding attorneys' fees and cost of suit, including
28 experts' witness fees as permitted by law; and

1 G. Such other and further relief as this Court may deem just and
2 proper.

3
4 **VII. JURY TRIAL DEMAND**

5 Plaintiff demands a trial by jury for all of the claims asserted in this
6 Complaint so triable.

7
8 Dated: April 1, 2016

JOHNSON & WEAVER, LLP
BRETT M. WEAVER
FRANK J. JOHNSON

9
10
11 By: s/ Brett M. Weaver
BRETT M. WEAVER

12
13 600 West Broadway, Suite 1540
San Diego, CA 92101
14 Tel: 619-230-0063
15 Fax: 619-255-1856
brettw@johnsonandweaver.com
16 frankj@johnsonandweaver.com

17 Attorneys for Plaintiff
18 DONNA ZIZIAN

Table of Exhibits to Complaint

Exhibit No.	Document	Starting Page No.
A.	Massage Envy Membership Agreement	16

EXHIBIT A

MEMBER ID# CASA0
Total Contract Price _____
Initial Term _____

Massage Envy

Membership Agreement and Disclosures

We use the words *you* and *your* to mean the Buyer. The words *we* and *our* refer to Massage Envy.

BUYER NAME First _____ Last _____ Birth Date _____

BUYER Mailing Address _____

BUYER E-Mail Address _____ Work Phone _____ Home Phone _____

MEMBER NAME (If other than Buyer) First _____ Last _____ Birth Date _____

MEMBER Mailing Address _____

MEMBER E-Mail Address _____ Work Phone _____ Home Phone _____

EMERGENCY CONTACT First _____ Last _____ Phone _____

Membership Description & Payment Schedule

You have selected the following type of membership: SINGLE ADD-ON CORP

Your membership term of _____ months begins _____ and expires on _____.

You have elected to pay your membership:

☐ On a monthly basisYour membership dues of \$ CIRCLE ONE \$59 \$49 \$54 (not including any additional applicable taxes) are due on the _____ day of each month hereafter until your membership expires or is terminated in accordance with this agreement. Your enrollment fee of 0 is due today.☐ Paid in FullYour payment of \$ 0 is due today.☐ Your membership is auto-renewable. Following the initial term, your membership will automatically continue on a month-to-month basis at \$ _____ per month until your membership is cancelled or terminated as provided by the terms and conditions in this agreement.☐ You have the entire term of the membership agreement to use all pre-paid massages. You may continue to redeem your pre-paid massages after the initial term of the membership as long as your membership has been renewed and is current.

By signing below, I authorize Massage Envy to charge the account I have specified. Monthly dues and / or renewal fees will be withdrawn on or after the same day of each month. I understand that Massage Envy may continue to charge my account or cancel my membership in accordance with the terms and conditions of this agreement. Additionally, I authorize Massage Envy to charge my credit card on file in lieu of presenting it for any services received, at my request.

MEMBERSHIP / RENEWAL DUES

☐ MC ☐ Visa ☐ American Express ☐ Discover☐ ACH Transfer (complete ACH Transfer Form)

Credit Card Account # (Last 4 digits)* _____

Name on card: _____

Exp Date (mm/yy): _____ / _____

*Please provide Sales Associate with Credit Card Number in its entirety

BUYER SIGNATURE _____

BUYER PRINTED NAME _____

ANCILLARY SERVICES

☐ MC ☐ Visa ☐ American Express ☐ Discover

Credit Card Account # (Last 4 digits)* _____

Name on card: _____

Exp Date (mm/yy): _____ / _____

*Please provide Sales Associate with Credit Card Number in its entirety

DATE _____

We agree to sell and you agree to purchase the membership, goods and services described herein. You agree to pay us for the membership, goods and services according to the payment schedule above. Your signature below indicates your agreement to be bound by the terms, conditions, rules and regulations of this Agreement. All of the terms and conditions are a part of this contract. All persons signing this contract are equally responsible for paying it in full. The clinic has included additional information about your membership (brochure entitled "Your Massage Envy Membership") in your new membership packet for future reference.

YOU ACKNOWLEDGE RECEIVING AND READING A COMPLETED COPY OF THIS CONTRACT BEFORE SIGNING IT.

BUYER SIGNATURE _____

BUYER PRINTED NAME _____

DATE _____

MEMBER SIGNATURE _____

MEMBER PRINTED NAME _____

DATE _____



Initial here indicating you have read and understand the rules, regulations, terms and conditions of this agreement and those included in the Membership Brochure as a part of this Membership Agreement.

RULES & REGULATIONS

1-Your Dues Based membership entitles you to (1) one hour massage session in clinic per month during the term of your membership. Your Paid in Full membership gives you the ability to redeem all pre-paid massages immediately or as desired throughout the term of your membership. Each one hour massage session includes fifty minutes of hands-on massage and allows ten minutes for client consultation and dressing. Your membership status must be active in order to redeem any membership services including membership massages. Your membership services are not transferable to any other person or entity. Nationwide reciprocal benefit rates vary by clinic.

2- A Family Add-On membership is defined as any immediate family member that resides in the same household. Friends or relatives are not considered immediate family. Picture ID may be required upon enrollment in a Family Add-On offering.

3-Information about Guest Visitation Privileges, Canceling your Massage Session and Freezing a Membership are included in the Your Massage Envy Membership Brochure.

4- Canceling your membership: You may cancel this membership during the original term in the event that: (a) the member **permanently** relocates his or her residence more than a 25 mile radius from any Massage Envy clinic; or (b) a physician certifies that a member is permanently disabled or unable to avail himself or herself of massage services. All cancellation requests **MUST** be accompanied by written proof of relocation (i.e. Mortgage or Rental agreement, utility bill, car insurance, etc.) or submission of Doctor's note if medical reason is stated. Upon approval of your cancellation during the initial membership term, you will be relieved from making any future membership dues payments. If you have Paid in Full for your membership services, you will be refunded the unused portion of your membership dues for any actual services you have not yet received. If you die or become disabled such that you are unable to receive all of your membership services, you and/or your estate will be relieved from making payment for membership services other than those you received prior to your death or disability. If you have Paid in Full for your membership services, you or your estate will be refunded the unused portion of your membership dues for any actual services you have not received. You may cancel this membership during the renewal term of the membership upon 30 day advance written notice to the Massage Envy clinic at which your membership originated. You are responsible for any and all membership fees incurred until you cancel your membership in accordance with the terms of this agreement.

5-We reserve the right to terminate or deny re-enrollment for an indeterminate amount of time if a customer has an unsatisfactory payment history. IF THE MEMBERSHIP ACCOUNT BECOMES DELINQUENT AND IS NOT PROPERLY CANCELLED, THIS ACCOUNT WILL BE REFERRED TO COLLECTIONS AND BUYER AGREES TO PAY ALL REASONABLE COLLECTIONS COSTS, INCLUDING REASONABLE ATTORNEYS FEES.

6-Inappropriate behavior from clients or therapists will not be tolerated in any manner. We request that you immediately notify the Clinic Administrator for appropriate action. We have the right to refuse or discontinue service at any time for any reason. Member agrees to follow all clinic rules and regulations. Violation of clinic rules and regulations may result in suspension or cancellation of your membership. Member will be responsible for payment in full upon revocation of membership. We reserve the right to change clinic rules, regulations or pricing at any time upon reasonable notice. In addition, Massage Envy cannot be responsible for lost or stolen articles.

TERMS & CONDITIONS

We will make our best effort to process all of your payments properly. However, we shall incur no liability if we are unable to completely process any of your payments because of the existence of any one or more of the following circumstances:

- 1) If, through no fault of ours, your payment account does not contain sufficient funds to complete the transaction or the transaction would exceed the credit limit of your credit card, or your payment account or credit card does not otherwise permit the transaction to be executed; or
- 2) You have not provided us with the correct account information to process your payment accurately; or
- 3) Circumstances beyond our control, such as but not limited to fire, flood, acts of war, terrorism or other interference from an outside force, that prevent the proper execution of the transaction and we have taken reasonable precautions to avoid these circumstances.

We reserve the right to collect at any time any previous outstanding membership balances or balances for any other services that have not been satisfied.

For purposes of identification and billing, you agree to provide us with current, accurate, complete and updated information including your name, address, telephone number and applicable payment data. You agree to notify us promptly of any changes in your membership data. You have the right to receive a notice of change in the event that any changes to the terms and conditions of your membership are implemented that will vary the amount to be periodically billed to your account as specified in the Membership Description and Payment Schedule section of this agreement. We will send you a notice of change at the mailing address you have provided at the top of this Agreement at least ten days prior to the effective date of such change. Except as expressly provided herein, we may modify our services or the terms and conditions of this Agreement at any time without notice and such modifications shall be deemed effective immediately upon making such changes.

DISCLAIMER OF LIABILITY

Massage Envy only hires professional massage therapists who comply with state, city and/or local licensing requirements. If you would like to see a particular massage therapist's license or registration, please contact the Clinic Administrator. Additionally, if you have any questions, comments or complaints about your massage therapist, please bring this to the attention of management immediately.

It is your responsibility to inform the therapist of any pre-existing conditions, limitations or specific sensitivities as well as to inform your therapist if you feel any discomfort during the session. In the event that you experience discomfort, please ask the therapist to adjust the level of pressure. **YOU UNDERSTAND AND VOLUNTARILY ACCEPT ANY RISKS ASSOCIATED WITH YOUR MASSAGE OR ANY USE OF THE CLINIC'S FACILITIES. EXCEPT WHERE PROHIBITED BY LAW, YOU AGREE THAT MASSAGE ENVY WILL NOT BE LIABLE FOR ANY INJURY, INCLUDING, WITHOUT LIMITATION, PERSONAL, BODILY, OR MENTAL INJURY, ECONOMIC LOSS, OR ANY DAMAGE TO YOU RESULTING FROM NEGLIGENCE, OTHER ACTS OF THE CLINIC, ANYONE ON THE CLINIC'S BEHALF, OR ANYONE USING THE SERVICES OF THE FACILITIES OF THE CLINIC.**

OTHER PROVISIONS

LATE CHARGE. If all or part of any scheduled payment is more than ten days late, we may charge you a late fee of \$10.00.

Entire Agreement. This Agreement together with Massage Envy's Membership Rules & Regulations, constitute the entire agreement between you and us. This agreement cannot be amended except in writing executed by both parties.

Other Rights. We may delay enforcing any of our rights without losing them. We can enforce this Agreement against your heirs and legal representatives.

Assignment. We may assign or transfer this Agreement or any of our rights under this Agreement without notice to you, except as otherwise required by law. Your rights or obligations under this Agreement cannot be assigned by you to anyone else without our prior written consent.